

App. No. 10/722,173

Election under 37 CFR §1.142  
Preliminary amendment under 37 CFR §1.115**REMARKS**

Claims 1-27 remain pending and under consideration. Claim 1 is an independent claim. Claim 1 has been amended. Claims 28-38 drawn to a non-elected invention have been cancelled. Examination and consideration of the application, as amended, are hereby respectfully requested.

***Election/Restriction***

Examiner has restricted claims in the application to one of the following inventions:

- I. Claims 1-27 drawn to an airgun; and
- II. Claims 28-38 drawn to a method for propelling a projectile.

Applicant hereby elects Invention I (Claims 1-27) for further prosecution, without traverse.

***Claim Amendment***

In a case recently decided by the United States Court of Appeals for the Federal Circuit (CAFC), certain language in one of the patents at issue, similar to language originally employed in Claim 1 of the instant application, has been construed in a manner differing from that intended by the Applicant. It is not clear whether the CAFC claim construction is specific to the fact patterns of the decided case, or may be applied more generally. Accordingly, Claim 1 has been amended so as to ensure that it will be construed in the manner originally intended by the Applicant.

The recently-decided case is *Superguide Corporation v. Directv, Inc.* (CAFC 02-1561, -1562, and -1594, decided 02/12/2004). At least within the context of *Superguide*, the Court has interpreted "at least one of" followed by a conjunctive list of items in the patent in suit (US 5038211) to mean at least one of *each* item in the list. In the instant application, the Applicants intended "at least one of" followed by such a list to mean at least one item *from* the list. Since the claim construction of the CAFC in *Superguide* may at least raise the possibility of a narrower claim construction than that intended by the Applicants, Claim 1 has been amended. The phrase "at least one of" has been deleted, and the conjunction "and" in the subsequent pair of steps has been

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replaced by the conjunction "or". The conjunction "or" is to be construed inclusively (e.g., "a dog or a cat" would be interpreted as "a dog, or a cat, or both"; Bryan A. Garner, Elements of Legal Style p. 103, 2nd ed. 2002), unless: i) it is explicitly stated otherwise, e.g., by use of "either...or", "only one of...", or similar language; or ii) two or more of the listed alternatives are mutually exclusive within the context of the claim, in which case "or" would encompass only those combinations involving non-mutually-exclusive alternatives. Applicant believes that this amendment does not change the scope of the amended claims from the originally intended scope. In particular, the amendment is not a narrowing amendment, nor is it made for reasons related to patentability.

### ***Conclusion***

In view of the above, it is respectfully submitted that Claims 1-27 are ready for examination. Examination and allowance of Claims 1-27 at an early date is earnestly solicited.

Respectfully submitted,

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